

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

FRANK J. GIAMBATTISTA,

Plaintiff,

- v -

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

02-CV-704-S

ORDER

This matter having come on for hearing on June 20, 2005, upon the Motion and Amended Motion for Approval of Attorney Fees under 42 U.S.C. § 406(b) filed by plaintiff's attorney Kenneth R. Hiller, Esq., wherein Mr. Hiller seeks attorney fees in the amount of \$9,095.50 for 33.2 hours of work before the District Court, the Commissioner of Social Security having filed a response to the motion advising the Court that she has no opposition to the fee requested, but further advising that the Court that the Agency, in error, did not withhold 25% of the plaintiff's past due benefits for the payment of the plaintiff's attorney fees and therefor having requested that any order for fees reflect an offset on behalf of the plaintiff of EAJA fees already paid to Mr. Hiller against any fees awarded by the Court and the Court having directed that the plaintiff be ordered to show cause why the fees requested by his attorney in the amount of \$9,095.50 not be approved, and the Clerk of the Court having issued such an Order to Show Cause which was returnable before this Court on June 20, 2005, there being no opposition to the motion, and the Court having duly considered the pleadings in this action, the Court finds that the amount requested by the plaintiff's attorney is 25% of the plaintiff's past due benefits, that the plaintiff and his attorney entered into a

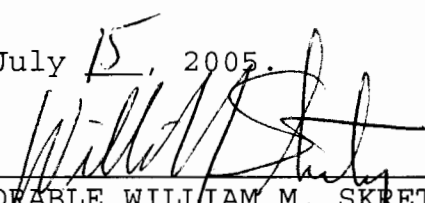
retainer agreement, and that the fee requested is reasonable, accordingly, it is hereby

ORDERED, that plaintiff's attorney, Kenneth R. Hiller, is awarded fees in the amount of \$9,095.50, pursuant to 42 U.S.C. § 406(b), it is further

ORDERED, that in accordance with Wells v. Bowen, 855 F.2d 37, 45 (2d. Cir. 1988), the plaintiff shall be credited with a setoff against said fee award in the amount of \$4,906.31, the amount of fees and expenses previously awarded under the Equal Access to Justice Act, thus plaintiff's attorney is entitled to receive a total of \$4,189.19 from plaintiff's past due benefits, and it is further

ORDERED, that in accordance with 20 C.F.R. 404.502(a) plaintiff's attorney is directed to seek the payment of \$4,189.19 directly from the plaintiff prior to any action by the Social Security Administration.

DATED: Buffalo, New York, July 15, 2005.


HONORABLE WILLIAM M. SKRETNY
U.S. DISTRICT COURT JUDGE